

ASSEMBLY BILL

No. 1261

**Introduced by Assembly Member Burke
(Coauthor: Assembly Member Brown)**

February 27, 2015

An act to add Article 7 (commencing with Section 14590.10) to Chapter 8.7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to adult day health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1261, as introduced, Burke. Community-based adult services: adult day health care centers.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified, low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law provides, to the extent permitted by federal law, that adult day health care (ADHC) be excluded from coverage under the Medi-Cal program.

This bill would establish the Community-Based Adult Services (CBAS) program as a Medi-Cal benefit and would specify eligibility requirements for participation in the CBAS program. The bill would require that CBAS providers be licensed as ADHC centers and certified by the California Department of Aging as CBAS providers. The bill would require CBAS providers to meet specified licensing requirements and to provide care in accordance with specified regulations. The bill would require that those provisions be implemented only if federal financial participation is available.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) California supports the dignity, independence, and choice
4 of seniors and persons with disabilities to live in the most integrated
5 setting appropriate, in their own home or a community-based
6 setting, and to be free from unnecessary institutionalization.

7 (b) The American population is swiftly aging. According to the
8 federal Centers for Disease Control and Prevention, in 2007
9 individuals 65 years of age and over represented 12.6 percent of
10 the American population; by 2030 it is estimated the older adult
11 population will reach 20 percent of the whole, with 70 million
12 adults over 65 years of age. Many of these adults will experience
13 disability and chronic conditions. The Alzheimer’s Association
14 reports that over five million Americans are living with
15 Alzheimer’s disease and that number will grow to 16 million by
16 2050, with the cost of caring for those individuals growing from
17 \$203 billion in 2013 to \$1.2 trillion by mid-century.

18 (c) According to the United States Census, California’s older
19 adult population is the country’s largest, with over four million
20 seniors currently residing in the state. The California Department
21 of Aging reports that one in every five Californians is now 60 years
22 of age or older and 40 percent of those individuals have a disability.
23 The state’s population is also diverse: just under one-half million
24 older adults in the state identify as Latino or Hispanic, 354,000
25 identify as Asian, over 182,000 as African American, and over
26 100,000 people as Native American, Pacific Islander, or multiracial.

27 (d) Adult Day Health Care (ADHC) was established in
28 California in 1974 as a service designed to meet the needs of older
29 adults and adults with disabilities in community settings rather
30 than in institutional care. ADHC centers are licensed daytime
31 health facilities that provide integrated services from a
32 multidisciplinary team including nurses, social workers,
33 occupational therapists, and other professionals.

34 (e) ADHC centers serve frail elders and other adults with
35 disabilities, chronic conditions, and complex care needs, such as

1 Alzheimer’s disease or other dementia, diabetes, high blood
2 pressure, mental health diagnoses, traumatic brain injury, and
3 people who have had a stroke or breathing problems or who cannot
4 take medications properly.

5 (f) ADHC centers also offer caregiver support, addressing
6 research findings that identify caregiver stress as a leading cause
7 of placement in a nursing facility, as well as putting the aging or
8 disabled adult at increased risk for abuse or neglect.

9 (g) ADHC services include health, therapeutic, and social
10 services including transportation; skilled nursing care; physical,
11 occupational, and speech therapy; medical social work services;
12 therapeutic exercise activities; protective supervision; activities
13 of daily living; brain-stimulating activities; and a nutritionally
14 balanced hot meal. Services are provided in accordance with a
15 person-centered care plan designed after a three-day
16 interdisciplinary team assessment that includes a home visit and
17 communication with the participant’s primary care physician.

18 (h) ADHC participants, who are at risk of institutionalization,
19 receive services in the center and return to their own homes at
20 night. According to a 2012 study by the California Medicaid
21 Research Institute, the statewide weighted average annual per
22 person nursing home cost for Medi-Cal/Medicare recipients in
23 California is \$83,364, while the average annual expenditure per
24 person for ADHC for this population is \$9,312.

25 (i) ADHC centers are licensed by the State Department of Public
26 Health and overseen by the California Department of Aging and
27 the State Department of Health Care Services.

28 (j) In 1977, Senator Henry Mello issued a report that identified
29 the need for 600 ADHC centers statewide to meet the needs of
30 California’s elder population. At its peak in 2004, approximately
31 360 ADHC centers provided care to over 40,000 medically fragile
32 Californians. In December 2013, there were a total of 270 open
33 ADHC centers in California, including 245 serving the Medi-Cal
34 population, two centers serving private-pay clients, and 23 centers
35 associated with Programs of All-Inclusive Care for the Elderly.
36 Medi-Cal recipients receiving services at ADHC centers totaled
37 28,777 persons.

38 (k) In 2015, 32 California counties do not have an adult day
39 health center, including Alpine, Amador, Calaveras, Colusa, Del
40 Norte, El Dorado, Glenn, Inyo, Kings, Lake, Lassen, Madera,

1 Mariposa, Mendocino, Modoc, Mono, Nevada, Placer, Plumas
2 San Benito, San Joaquin, San Luis Obispo, Sierra, Siskiyou,
3 Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne,
4 and Yuba.

5 (l) For many years, ADHC was a state plan optional benefit of
6 the Medi-Cal program, offering an integrated medical and social
7 services model of care that helped individuals continue to live
8 outside of nursing homes or other institutions.

9 (m) California's adult day services have experienced significant
10 instability in recent years due to California's fiscal crisis and
11 subsequent budget reductions. The Budget Act of 2011 and the
12 related trailer bill, Chapter 3 of the Statutes of 2011, eliminated
13 ADHC as a Medi-Cal optional State Plan benefit.

14 (n) A class action lawsuit, Esther Darling, et al. v. Toby Douglas,
15 et al., challenged the elimination of ADHC as a violation of the
16 Supreme Court decision in *Olmstead v. L.C.* The state settled the
17 lawsuit, agreeing to replace ADHC services with a new program
18 called Community-Based Adult Services (CBAS), effective April
19 1, 2012, to provide necessary medical and social services to
20 individuals with intensive health care needs. CBAS is a managed
21 care benefit, administered through California's Medi-Cal Managed
22 Care Organizations. For CBAS-eligible individuals who do not
23 qualify for managed care enrollment and who have an approved
24 medical exemption or who reside in a county where managed care
25 is currently not available, CBAS services are provided as a
26 Medi-Cal fee-for-service benefit.

27 (o) The State Department of Health Care Services amended the
28 "California Bridge to Reform" Section 1115 Waiver to include
29 the new CBAS program, which was approved by the Centers for
30 Medicare and Medicaid Services on March 30, 2012, and renewed
31 on November 28, 2014. CBAS is operational under the Section
32 1115 Bridge to Reform Waiver through October 31, 2015.

33 (p) Adult day services and CBAS programs remain a source of
34 necessary skilled nursing, therapeutic services, personal care,
35 supervision, health monitoring, and caregiver support. The state's
36 demographic forecast projects the continued growth of the aging
37 population at least through the year 2050, thereby increasing the
38 need and demand for integrated, community-based services.

39 (q) Continuation of a well-defined and well-regulated system
40 of CBAS programs is essential in order to meet the rapidly

1 changing needs of California’s diverse and aging population and
2 the state’s goals for the Coordinated Care Initiative.

3 (r) Ensuring that the key elements of the CBAS program are
4 codified in state law stabilizes the program’s structure and
5 eligibility framework in order to enable thousands of disabled and
6 frail Californians who rely upon adult day health programs today,
7 and those who will need this service in the future, to be able
8 continue to receive services that support them in remaining
9 independent and free of institutionalization for as long as possible.

10 SEC. 2. Article 7 (commencing with Section 14590.10) is
11 added to Chapter 8.7 of Part 3 of Division 9 of the Welfare and
12 Institutions Code, to read:

13

14

Article 7. Community-Based Adult Services

15

16 14590.10. (a) Notwithstanding the operational period of CBAS
17 as specified in the Special Terms and Conditions of California’s
18 Bridge to Reform Section 1115(a) Medicaid Demonstration
19 (11-W-00193/9), and notwithstanding the duration of the CBAS
20 settlement agreement, Case No. C-09-03798 SBA, CBAS shall be
21 a Medi-Cal benefit, and shall be included as a covered service in
22 contracts with all managed health care plans, with standards,
23 eligibility criteria, and provisions that are at least equal to those
24 contained in the Special Terms and Conditions of the demonstration
25 on the date the act that added this section is chaptered. Any
26 modifications to the CBAS program that differ from the Special
27 Terms and Conditions of the demonstration shall be permitted only
28 if they offer more protections or permit greater access to CBAS.

29 (b) CBAS shall be available to beneficiaries who meet or exceed
30 the medical necessity criteria established in Section 14526.1 and
31 for whom one of the following criteria is present:

32 (1) The beneficiary meets or exceeds the “Nursing Facility Level
33 of Care A” (NF-A) criteria as set forth in the California Code of
34 Regulations.

35 (2) Both of the following apply to the beneficiary:

36 (A) (i) The beneficiary has a diagnosed organic, acquired, or
37 traumatic brain injury or a chronic mental disorder, or both.

38 (ii) For the purpose of this subparagraph, “chronic mental
39 disorder” means that the beneficiary has one or more of the
40 following diagnoses or their successor diagnoses included in the

- 1 most recent version of the Diagnostic and Statistical Manual of
- 2 Mental Disorders published by the American Psychiatric
- 3 Association:
- 4 (I) A pervasive developmental disorder.
- 5 (II) An attention deficit and disruptive behavior disorder.
- 6 (III) A feeding and eating disorder of infancy, childhood, or
- 7 adolescence.
- 8 (IV) An elimination disorder.
- 9 (V) A schizophrenia and other psychiatric disorder.
- 10 (VI) A mood disorder.
- 11 (VII) An anxiety disorder.
- 12 (VIII) A somatoform disorder.
- 13 (IX) A factitious disorder.
- 14 (X) A dissociative disorder.
- 15 (XI) Paraphilia.
- 16 (XII) An eating disorder.
- 17 (XIII) An impulse control disorder not elsewhere classified.
- 18 (XIV) An adjustment disorder.
- 19 (XV) A personality disorder.
- 20 (XVI) A medication-induced movement disorder.
- 21 (B) The beneficiary needs assistance or supervision as described
- 22 in clause (i) or (ii).
- 23 (i) The beneficiary needs assistance or supervision with at least
- 24 two of the following:
- 25 (I) Bathing.
- 26 (II) Dressing.
- 27 (III) Feeding himself or herself.
- 28 (IV) Toileting.
- 29 (V) Ambulating.
- 30 (VI) Transferring himself or herself.
- 31 (VII) Medication management.
- 32 (VIII) Hygiene.
- 33 (ii) The beneficiary needs assistance or supervision with at least
- 34 one of the activities identified in clause (i) and needs assistance
- 35 with at least one of the following:
- 36 (I) Money management.
- 37 (II) Accessing community and health resources.
- 38 (III) Meal preparation.
- 39 (IV) Transportation.

1 (3) The beneficiary has a moderate to severe cognitive disorder
2 such as dementia, including dementia characterized by the
3 descriptors of, or equivalent to, Stages 5, 6, or 7 of the Alzheimer’s
4 type.

5 (4) The beneficiary has a mild cognitive disorder such as
6 dementia, including dementia of the Alzheimer’s type, and needs
7 assistance or supervision with at least two of the activities described
8 in clause (i) of subparagraph (B) of paragraph (2).

9 (5) (A) The beneficiary has a developmental disability.

10 (B) For the purpose of this paragraph, “developmental disability”
11 means a disability that originates before the individual attains 18
12 years of age, continues, or can be expected to continue, indefinitely,
13 and constitutes a substantial disability for that individual as defined
14 in Section 54001 of Title 17 of the California Code of Regulations.

15 (c) (1) CBAS providers shall be licensed as adult day health
16 care centers and certified by the California Department of Aging
17 as CBAS providers, and shall meet the standards specified in this
18 chapter and Chapter 5 (commencing with Section 54001) of
19 Division 3 of Title 22 of the California Code of Regulations.

20 (2) CBAS providers shall meet all applicable licensing and
21 Medi-Cal standards, including, but not limited to, licensing
22 provisions in Division 2 (commencing with Section 1200) of the
23 Health and Safety Code, including Chapter 3.3 (commencing with
24 Section 1570) of Division 2 of the Health and Safety Code, and
25 shall provide services in accordance with Chapter 10 (commencing
26 with Section 78001) of Division 5 of Title 22 of the California
27 Code of Regulations.

28 (3) CBAS providers shall comply with the provisions of
29 California’s Bridge to Reform Section 1115(a) Medicaid
30 Demonstration (11-W-00193/9) and any successor demonstration.

31 (d) (1) In counties where the State Department of Health Care
32 Services has implemented Medi-Cal managed care, CBAS shall
33 be available as a Medi-Cal managed care benefit pursuant to
34 Section 14186.3, except that for individuals who qualify for CBAS,
35 but who are not qualified for, or who are exempt from, enrollment
36 in Medi-Cal managed care, CBAS shall be provided as a
37 fee-for-service Medi-Cal benefit.

38 (2) For Medi-Cal CBAS services provided through managed
39 care health plans, the plans shall reimburse contracted providers
40 at rates that are not less than Medi-Cal fee-for service (FFS) rates,

1 as published and revised by the State Department of Health Care
2 Services, including retroactive payment of any rate increment
3 based on State Department of Health Care Services retroactive
4 rate adjustments, for equivalent services on the date the services
5 were provided.

6 (e) For purposes of this section, “Community-Based Adult
7 Services” or “CBAS” means an outpatient, facility-based program,
8 provided pursuant to a participant’s individualized plan of care,
9 as developed by the center’s multidisciplinary team, that delivers
10 nutrition services, professional nursing care, therapeutic activities,
11 facilitated participation in group or individual activities, social
12 services, personal care services, and, when specified in the
13 individual plan of care, physical therapy, occupational therapy,
14 speech therapy, behavioral health services, registered dietician
15 services, and transportation.

16 (f) This section shall be implemented only if federal financial
17 participation is available.